



Docket AP.PRE.REQ

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		SOM919990019US1	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>December 30, 2005</u> Signature <u>V. Bencivenni</u> Typed or printed name <u>V. Bencivenni</u>	Application Number <u>09/736,258</u>		Filed <u>December 15, 2000</u>
	First Named Inventor <u>Ephraim Feig</u>		
	Art Unit <u>2154</u>	Examiner <u>Haresh N. Patel</u>	
	Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. <u>48,956</u> Registration number <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34		<u>Robert W. Griffith</u> Signature <u>Robert W. Griffith</u> Typed or printed name <u>(516) 759-4547</u> Telephone number <u>December 30, 2005</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Attorney Docket No. SOM919990019US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

Applicant(s): Ephraim Feig
Docket No.: SOM919990019US1
Serial No.: 09/736,258
Filing Date: December 15, 2000
Group: 2154
Examiner: Haresh N. Patel

I hereby certify that this paper is being deposited on this date with the U.S. Postal Service as first class mail addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature: *V. Benavente* Date: December 30, 2005

Title: Application Server and Streaming Server Streaming
Multimedia File in a Client Specific Format (As Amended)

REMARKS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the outstanding final Office Action dated October 21, 2005, please consider the following remarks:

REMARKS

The present application was filed on December 15, 2000 with claims 1-57. Claims 1-15 remain pending. Claim 1 is the pending independent claim.

In the outstanding final Office Action dated October 21, 2005, the Examiner: (i) rejected claims 1, 4 and 5 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,996,015 to Day et al. (hereinafter "Day") in view of U.S. Patent No. 5,805,821 to Saxena et al. (hereinafter "Saxena") and U.S. Patent Application Publication No. 2002/0138640 to Raz et al. (hereinafter "Raz"); (ii) rejected claims 2 and 3 under 35 U.S.C. §103(a) as being unpatentable over Day in view of Saxena, Raz and U.S. Patent No. 5,933,155 to Akeley (hereinafter "Akeley"); (iii) rejected claim

6 under 35 U.S.C. §103(a) as being unpatentable over Day in view of Saxena, Raz and U.S. Patent No. 6,681,306 to Kessler et al. (hereinafter “Kessler”); (iv) rejected claims 7 and 8 under 35 U.S.C. §103(a) as being unpatentable over Day in view of Saxena, Raz, U.S. Patent No. 6,405,256 to Lin et al. (hereinafter “Lin”) and “Official Notice”; (v) rejected claims 9 and 10 under 35 U.S.C. §103(a) as being unpatentable over Day in view of Saxena, Raz, U.S. Patent No. 6,185,184 to Mattaway et al. (hereinafter “Mattaway”) and U.S. Patent Application Publication No. 2002/0023127 to Sabeti (hereinafter “Sabeti”); (vi) rejected claims 11 and 12 under 35 U.S.C. §103(a) as being unpatentable over Day in view of Saxena, Raz, Kessler and U.S. Patent No. 6,732,111 to Brodersen et al. (hereinafter “Brodersen”); (vii) rejected claims 13 and 14 under 35 U.S.C. §103(a) as being unpatentable over Day in view of Saxena, Raz, Kessler, Brodersen and U.S. Patent No. 5,832,499 to Gustman (hereinafter “Gustman”); and (viii) rejected claim 15 under 35 U.S.C. §103(a) as being unpatentable over Day in view of Saxena, Raz and U.S. Patent No. 6,037,991 to Thro et al. (hereinafter “Thro”).

With regard to the rejection of claims 1, 4 and 5 under 35 U.S.C. §103(a) as being unpatentable over Day in view of Saxena and Raz, Applicant respectfully asserts that the cited combination fails to establish a prima facie case of obviousness under 35 U.S.C. §103(a), as specified in M.P.E.P. §2143.

As set forth therein, M.P.E.P. §2143 states that three requirements must be met to establish a prima facie case of obviousness. First, the cited combination must teach or suggest all the claim limitations. Second, there must be a reasonable expectation of success. Third, there must be some suggestion or motivation to combine reference teachings. It is sufficient to show that a prima facie case of obviousness has not been established by showing that only one of the requirements has not been met. Thus, with respect to claims 1, 4 and 5, a prima facie case of obviousness has not been established, because the collective teaching of Day, Saxena and Raz fails to suggest or render obvious the elements of such claims.

Day discloses a multimedia server connected in a network configuration with client computer systems. The multimedia server includes various functional units selectively operable for delivering and effecting the presentation of multimedia files to the client. Two embodiments are provided. A first embodiment is provided in FIG. 1 having a format server 107, a controller unit 109, and a data

pump 111 arranged as separate machines. Day states, in column 3, lines 43-45, that “[t]he data pump 111 stores multimedia assets, and delivers assets to the clients.” Thus, the first embodiment of Day fails to disclose an application server that stores multimedia data and a separate streaming server that converts and transmits multimedia data.

In a second embodiment, Day discloses a multimedia server 201 that includes a presentation manager 207, an application server 209, a control server unit 211, a data pump arrangement 213, and a multimedia file system 215. Day discloses that multimedia assets are stored in the multimedia file system and the data pump 213 streams data to the client.

As admitted by the Examiner, Day fails to disclose a predetermined data group size, the reading of a client address corresponding to the client apparatus, the buffering of consecutive groups in a staging buffer, and the transfer of the groups from the staging buffer to a streaming server. However, Applicant asserts that the second embodiment of Day also fails to disclose the receiving of a client request at the server that stores the multimedia file (multimedia file system); the converting of multimedia data to a format readable by the at least one client apparatus at the streaming server (data pump); and the selective storing of the multimedia file on at least one of the application server and the streaming server based on a number of client requests for the multimedia file.

The Examiner presents Saxena and Raz in order to remedy the deficiencies described above with regard to Day. Saxena discloses a media streamer optimized for the delivery of isochronous data streams and able to stream data into new computer networks with ATM technology. Raz discloses a system for streaming software to a plurality of clients. Applicant asserts that Saxena and Raz fail to remedy all of the deficiencies described above with regard to Day. For example, the control node staging, data striping, and remote procedure calls of Saxena, along with the intermediate servers of Raz, fail to provide proper support for a rejection of elements reciting: the receiving of a client request and reading of a client address corresponding to the client apparatus; the buffering of consecutive groups in a staging buffer; the transferring of the groups from the staging buffer to a streaming server; and the converting of multimedia data to a format readable by the at least one client apparatus at the streaming server.

Therefore, because Saxena and Raz fail to remedy the deficiencies of Day, the combination of Day, Saxena and Raz fails to disclose every element as recited in independent claim 1.

Applicant also notes that in providing the rejection to independent claim 1, the Examiner continuously cites portions of the references that are unrelated to each other and thus not combinable in the manner proposed in the present invention. For example, in rejecting the limitation of “storing on an application server a multimedia file including a plurality groups of multimedia data,” the Examiner first refers to a portion of Day that describes a database on an application server that stores asset information, such as title and subject of a presentation. The Examiner then refers to a portion of Day that describes the seamless concatenation of video segments. Thus, two unrelated portions of Day are used to support a rejection of a single element. This method of providing support for a rejection is also evident in the transferring and converting steps of independent claim 1.

Dependent claims 4 and 5 are patentable at least by virtue of their dependency from independent claim 1. The patentability of claim 1 is described above. Dependent claims 4 and 5 also recite patentable subject matter in their own right. Accordingly, Applicant therefore respectfully requests withdrawal of the §103(a) rejection of claims 1, 4 and 5.

With regard to the multiple §103(a) rejections relating to dependent claims 2, 3 and 6-15 in view of a plurality of secondary references, Applicant asserts that dependent claims 2, 3 and 6-15 are patentable at least by virtue of their dependency from independent claim 1. The patentability of independent claim 1 is described above. Additionally, any combination of the plurality of secondary references with Day fails to compensate for those deficiencies described above with regard to independent claim 1.

Dependent claims 2, 3 and 6-15 also recite patentable subject matter in their own right. For example, with regard to claim 9, the combination of Day, Saxena, Raz, Mattaway and Sabeti fails to disclose the determination, in a request handler, of a number of client requests, from at least one client apparatus, for a multimedia file. More specifically, the Examiner contends that Mattaway discloses this determination step. However, Mattaway only discloses a directory server apparatus for providing the current dynamically assigned Internet Protocol addresses of client processes currently connected to a computer network. A list of entries is maintained, however Mattaway

provides no disclosure of a determination of a number of client requests for a multimedia file from at least one client apparatus.

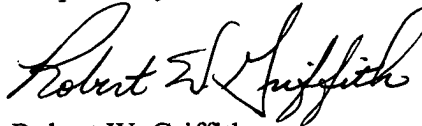
Additionally, with regard to claim 10, the combination of Day, Saxena, Raz, Mattaway and Sabeti fails to disclose the comparison of a number of client requests to a threshold number and the transferring of a multimedia file between servers when the number is greater than the threshold number. More specifically, the Examiner contends that Sabeti discloses these specific steps. However, Sabeti fails to disclose an application server and a streaming server and also fails to disclose anything regarding the transfer of a file between these two servers after a threshold number of requests are received.

With regard to claims 11 and 12, the combination of Day, Saxena, Raz, Kessler and Brodersen fails to provide any disclosure regarding the determination of a rate of sending multimedia from a streaming server to a client; the comparison of this rate to a threshold; and the purging of the multimedia file when the rate is less than the threshold. More specifically, the Examiner contends that Brodersen discloses these steps, however, Brodersen only discloses the attachment of non-database objects to any business object that a developer chooses.

Finally, Applicant notes the use of Raz, Sabeti, Brodersen as prior art references without any assurance that the subject matter relied upon in these references was disclosed in their respective provisional and/or parent applications, as would be required for these references to be considered prior art.

In view of the above, Applicant believes that claims 1-15 are in condition for allowance, and respectfully request withdrawal of the §103(a) rejections.

Respectfully submitted,



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